

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JONATHAN L. LIEBZEIT and
DEREK S. KRAMER,

Plaintiffs,

v.

RICK RAEMISCH, Secretary of
Wisconsin Department of Corrections;
MICHAEL THURMER, Warden of
Waupun Correctional Institution;
WILLIAM POLLARD, Warden of
Green Bay Correctional Institution;
DENNIS MOSHER, Program Director at
Green Bay Correctional Institution and
PETER HUIBREGTSE, Warden of
Wisconsin Secure Program Facility,

Defendants.

ORDER

10-cv-170-slc

This is a joint action brought by plaintiff Jonathan Liebreit, an inmate at the New Lisbon Correctional Institution, and plaintiff Derek Kramer, an inmate at the Wisconsin Secure Program Facility, for alleged violations of plaintiffs' constitutional rights. Plaintiffs request leave to proceed *in forma pauperis* and each has supported his request with a copy of his trust fund account statement for the six-month period immediately preceding the filing of the complaint. Although plaintiffs have joined their claims in one complaint, each is bringing an action subject to the 1996 Prison Litigation Reform Act and each must pay the full \$350 fee for filing the action. *Boriboune v. Berge*, 381 F.3d 852, 856 (7th Cir. 2004). A decision on the requests will be delayed until each plaintiff makes an initial partial payment of the \$350 filing fee as required by 28 U.S.C. § 1915(b) and the 1996 Prison Litigation Reform Act, and until each plaintiff confirms that he wishes to prosecute his action in a joint complaint, understanding the consequences of doing so as explained in this order.

Plaintiffs should be aware that when two or more prisoners join their claims in one lawsuit, I am required to record a strike under 28 U.S.C. § 1915(g) against each plaintiff named in the caption of the action if I conclude that *any* claim in the action is frivolous, malicious or fails to state a claim upon which relief may be granted. According to the court of appeals, when a prisoner who is part of a group complaint signs the pleading, he attests to the validity of all of the individual claims in the complaint, whether or not they concern him personally. Therefore, he assumes the risk of incurring a strike if any one claim relating to any other plaintiff warrants a strike under § 1915(g).

In addition, each plaintiff will be held legally responsible for knowing precisely what is being filed in the case on his behalf. He will be subject to sanctions under Fed. R. Civ. P. 11 for any pleading, motion or other paper filed over his name if such sanctions are found warranted in any aspect of the case.

In screening the complaint, the court will consider whether the action of one plaintiff should be severed from the action of the other plaintiff and, if it decides severance is appropriate, plaintiffs will be required to prosecute their claims separately. However, regardless whether plaintiffs agree to prosecute this case jointly or separately, each will be required to make an initial partial payment of the \$350 filing fee for filing the action.

From plaintiffs' trust fund account statements, I conclude that plaintiff Liebzeit must pay \$9.23 as an initial partial payment of the \$350 fee for filing his complaint and that plaintiff Kramer must pay \$5.21 as an initial partial payment of the \$350 filing fee for his action.

Plaintiffs have submitted with their complaint a motion for class certification and a motion for appointment of counsel, as well as numerous affidavits in support. The court will consider these submissions at screening.

ORDER

IT IS ORDERED that

1. Each plaintiff may have until April 29, 2010, in which to advise the court whether he wishes to prosecute this action jointly.
2. If plaintiffs decide to proceed with the action
 - a. Plaintiff Liebzeit may have until April 29, 2010, in which to submit a check or money order made payable to the clerk of court in the amount of \$9.23.
 - b. Plaintiff Kramer may have until April 29, 2010, in which to submit a check or money order made payable to the clerk of court in the amount of \$5.21.
3. If, by April 29, 2010, either plaintiff fails to submit the required initial partial payment, that plaintiff will be considered to have withdrawn from the lawsuit voluntarily and will be dismissed from the case without being charged any portion of the \$350 filing fee.

Entered this 7th day of April, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge